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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 22) is reported in 47 F (2d) 422. No opinion was rendered by the Supreme Court of the District of Columbia. The judgment of that court, stating the basis of its action, is in the record. (R. 19.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931. (R. 24.) The petition for certiorari was filed May

2, 1931, and was granted May 25, 1931. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Was the action of the Secretary of the Interior in disallowing a portion of respondent's claim, based upon the purchase price of property, title to which was retained, erroneous as a matter of law?

2. Was the discretion of the Secretary of the Interior under the Act of March 2, 1919, to disallow claims the allowance of which he determined to be unjust and inequitable, removed by the Act of February 13, 1929?[1]

STATUTES INVOLVED

The applicable statutes appear in the Appendix, *infra*, pp. 24–29.

STATEMENT

Pursuant to the Act of February 13, 1929, c. 182, 45 Stat. 1166, the respondent filed a petition in the Supreme Court of the District of Columbia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for the purchase of property containing chrome, which was disallowed by the Secretary of the Interior in so far as such expenditures were concerned. The Supreme Court of the District of Columbia dismissed this

[1] The same question is involved in No. 67.

petition, but upon appeal to the Court of Appeals of the District of Columbia this decision was reversed and the case remanded to the Secretary for further proceedings. The case was disposed of upon the pleadings. The petition (R. 1) alleged that respondent had filed a claim under the War Minerals Relief Act of March 2, 1919. This Act provided, in so far as here material—

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * chrome * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the Nation in the prosecution of the war * * *.
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; * * * *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained * * * chrome * * * in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction

> of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce * * * chrome * * * for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: * * *

The petition further alleged in substance that the claim filed by respondent included among net losses the sum of $16,259, expended for the purchase of property containing chrome, and that after hearings the Secretary of the Interior denied the respondent an award for said sum on the ground that payment for property was not reimbursable under the law. The petition alleged that there had been a final decision against the respondent on a question of law which was subject to review under the Act of February 13, 1929, and asked a review of the decision and appropriate relief.

The petitioner originally filed a response to the petition for review and for mandamus to which were attached exhibits showing the action of the Secretary of the Interior in denying respondent's claim for the expenditure of $16,259. (R. 4.) This response was subsequently withdrawn by stipulation (R. 15), leaving the exhibits for the con-

sideration of the court, and the petitioner answered.

Although the allegation in paragraph 8 of the petition that the respondent had expended moneys for the purchase of property and that such items constituted a net loss to respondent was denied (R. 16), this denial was qualified by paragraph 12 of the answer (R. 17), where it is alleged in substance that in the exercise of the discretion confided to the Secretary of the Interior the petitioner, following similar action by his predecessors, had determined that no allowance should be made for expenditures in purchasing property to which title was retained, that respondent's claim was for sums expended in the purchase of property to which respondent continued to hold title and that respondent's claim had therefore been disallowed.

The Supreme Court of the District of Columbia dismissed the petition for review and mandamus by a judgment in which it was ordered and directed "that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior * * *." (R. 19.)

Upon respondent's appeal to the Court of Appeals of the District of Columbia that court reversed the judgment of the Supreme Court of the District and directed that the cause be remanded for further proceedings not inconsistent with its opinion. (R. 22.) The Court of Appeals held that the Act of March 2, 1919, required the allowance of claims based upon moneys spent in pur-

chasing land, relying upon its earlier decisions in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but made no mention of the reversal of its decision in that case by this court in *Work* v. *Rives*, 267 U. S. 175.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

(1) In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon the purchase price of property to which respondent retained title.

(2) In holding that as a matter of law the petitioner was required to make an allowance for any net loss sustained by the respondent in the purchase of property to which it still held title.

(3) In holding that the petitioner should determine as a matter of fact the net loss sustained by the respondent by reason of the purchase of property to which it still held title.

(4) In holding that petitioner's discretion under the Act of March 2, 1919, in disallowing claims based upon the purchase price of property was eliminated by the Act of February 13, 1929.

(5) In directing the Secretary of the Interior to determine the loss resulting from the expenditure of $16,500 without determining whether the allowance of any such loss would in his opinion be just and equitable.

SUMMARY OF ARGUMENT

1. As a matter of law, a claim based upon expenditures by the respondent for the purchase of property to which it retained title was not allowable, and the petitioner properly disallowed respondent's claim.

2. Even if the allowance of respondent's claim was not prohibited as a matter of law, the petitioner had discretion to disallow the claim under the Act of March 2, 1919, which was not removed by the Act of February 13, 1929. If the petitioner has exercised that discretion, it is not open for review. If he has not exercised it, the court below erred in directing him to proceed in such a way as to deprive him of the opportunity to exercise it.

ARGUMENT

I

THE PETITIONER'S ACTION IN DISALLOWING RESPONDENT'S CLAIM WAS CORRECT AS A MATTER OF LAW

If, as we contend, the petitioner was justified as a matter of law in disallowing respondent's claim, based upon expenditures for the purchase of property to which it retained title, it will be unnecessary to consider the extent of petitioner's discretion in connection with the allowance or disallowance of claims under the Act of March 2, 1919, and whether that discretion has been affected by the Act of February 13, 1929. Accordingly, the question of discretion and the effect of the decision of this Court in *Work* v. *Rives*, 267 U. S. 175 (which deals with the

subject of petitioners' discretion under the Act of March 2, 1919), are dealt with in the second division of the argument.

The answer alleges that the petitioner and his predecessor have held that where title to real estate purchased by a claimant continued to be held by the claimant at the date of the passage of the Act of March 2, 1919, there was no loss existing at that date for which compensation could be made (R. 16), and, in substance, that, under the statute, the petitioner was required to disallow the respondent's claim based upon expenditures for property to which it still retained title.

We submit that this disposition of respondent's claim was based upon a correct interpretation of the statute. The Act of March 2, 1919, expressly limited the Secretary of the Interior to the adjustment and payment of "net losses" which had been "suffered." The Secretary was forbidden by the statute to include profits of any kind in the allowance of any such claim, nor was he allowed to recognize any investment for mere speculative purposes. While the respondent presented a claim for alleged loss arising out of expenditures for the purchase of property, it appears that respondent retained title to that property. There is no indication in the record that the respondent proved that the property declined in value after purchase so that the respondent would suffer any loss as a result of the purchase. There is no indication

whatever that the property was entirely valueless, except the bare claim of the respondent that it had sustained a loss in the full amount of the purchase price. On the contrary, it appears that at the time of the armistice a considerable quantity of ore mined from the property was on hand and that 228 tons had been salvaged at $43.40 per ton. (R. 8.) There is no indication that the ore so salvaged exhausted the ore supply, or that if it did exhaust the supply of chrome ore the property did not have other value for mineralogical or agricultural purposes. In these circumstances the petitioner could not have concluded that the respondent had suffered a loss, or that a profit prohibited by the statute would not result to the respondent if the claim was allowed and paid. Accordingly, it is clear that solely as a matter of law, entirely aside from the considerations of justice and equity which, under the statute, were to govern the Secretary's exercise of discretion, the petitioner's disallowance of the claim was correct and the court below erred in reversing his determination with respect thereto.

While it is our contention that the statute clearly required the action which the Secretary took with respect to respondent's claim, we also contend that even if the terms of the statute do not explicitly require this disposition of the claim, the uniform action of successive Secretaries of the Interior in disallowing similar claims is an administrative construction of the statute which should not be dis-

turbed unless it is clearly wrong. *United States* v. *Finnell*, 185 U. S. 236; *Hall* v. *Payne*, 254 U. S. 343.

The statute related to the granting of a new and unusual gratuity the limitations of which were not explicitly prescribed, and it invited and required administrative construction. The construction of statutes, general in their directions, has been held to be for the Secretary, without review by mandamus. *Hall* v. *Payne, supra; Wilbur* v. *United States*, 281 U. S. 206; *Alaska Smokeless Coal Co.* v. *Lane*, 250 U. S. 549; *Ness* v. *Fisher*, 223 U. S. 683, 693. The provision of the Act of February 13, 1929, authorizing a review of questions of law, certainly did not authorize the court below to reverse the decision of the petitioner unless it clearly violated the express provisions of the statute. Since the petitioner's decision was based upon a correct construction of the statute, or, at least, upon a permissible interpretation, the reversal was error.

It appears from the answer (R. 16) that the several Secretaries of the Interior who have considered claims under the Act of March 2, 1919, have disallowed all claims based upon the purchase price of property (whether title was retained or not), but the correctness of that determination is only involved in the present case so far as it relates to claims for the purchase of property to which title was retained. It is not necessary, therefore, for present purposes to deal with the propriety of

the interpretation of the statute upon which the disallowance of all claims for the purchase price of property was predicated, nor to discuss the legislative history of the Act of March 2, 1919, which appears to sustain this interpretation.[2]

The Secretary of the Interior requested the opinion of the Attorney General as to whether he was authorized to adjust, liquidate, and pay net losses sustained in the purchase of real estate and losses arising from the payment of interest on borrowed money. Attorney General Sargent, in an opinion rendered March 23, 1928, advised:

> I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. (35 Op. A. G. 426, 430.)

Although the construction placed upon the statute by the several Secretaries of the Interior was called to the attention of Congress (see, for example, pp. 21, 43 of Secretary Payne's response to Senate Resolution 429, Senate Document 385, 36th Cong., 3d sess.), no statute has been passed which shows expressly or by inference that Congress disapproved the construction of the Act by the Secretaries of the Interior. By this long acquiescence in the administrative construction of the Act it is submitted that Congress has given its approval thereto.

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[2] This legislative history is set forth in petitioner's brief in support of the petition for certiorari in this case.

The legislative history of the Act of February 13, 1929, shows that it was not designed to change the construction placed upon the Act of March 2, 1919, by successive Secretaries of the Interior. On January 28, 1929, Mr. Robsion, on behalf of the Committee on Mines and Mining, submitted a report (H. Rep. 2250, 70th Cong., 2d sess.) to the House of Representatives in connection with a pending Bill (H. R. 15681), which subsequently was enacted and approved as the Act of February 13, 1929. Mr. Robsion said in part:

> The bill does not enlarge in any manner the scope of existing war minerals legislation, nor does it permit the filing of any new claims. It simply confers upon the Supreme Court of the District of Columbia, the appellate courts, and the Supreme Court of the United States jurisdiction to pass upon questions of law for the guidance of the Secretary of the Interior for his further administration of the war minerals act.
>
> It does not take the administration of the war minerals act away from the Secretary of the Interior as provided for in the original act.

Various attempts to enact legislation specifically designed to reverse the construction of the Act by the Secretaries of the Interior were unsuccessful. On March 25, 1926, Senator Oddie, on behalf of the Committee on Mines and Mining, submitted a favorable report (S. Rep. 475, 69th Cong., 1st sess.) to the Senate upon a bill (S. 3641) to amend the

Act of March 2, 1919, which proposed bill contained the following provision:

> SEC. 3. That the Secretary of the Interior is hereby authorized and directed to include in his adjustments and payments in each claim all items of net loss, *including moneys expended or obligations incurred for or in connection with the purchase or lease of property* and money paid and due to be paid for interest on borrowed capital. (Italics ours).

This bill did not pass.

Just prior to the passage of the Act of February 13, 1929, House Bill 14131 was on the calendar but was withdrawn in favor of House Bill 15861, which was subsequently enacted as the Act of February 13, 1929. H. R. 14131 contained the following provisions:

> That section 5 of the Act entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, commonly referred to as the War Minerals Relief Act, is hereby amended to authorize and direct the Secretary of the Interior to determine, adjust, liquidate, and pay *net losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired* for the production of, or in the preparation to produce, either manganese, chrome, pyrites, or tungsten; and also to determine, adjust, liquidate, and pay net losses arising

> from money paid or due to be paid for interest on borrowed capital not to exceed the lawful rate of interest in the State where the obligation was incurred. (Italics ours.)

If Congress had intended to change the construction of the Act which had been followed for a decade by successive Secretaries, that could have been done by a simple change in the substantive provisions of the law. These provisions were not changed and the court review was of questions of law determined under the statute without change. The statute was correctly interpreted by the petitioner. His action in disallowing the respondent's claim was correct. Therefore, it was error for the court below to reverse the petitioner's determination.

II

UNDER THE ACT OF MARCH 2, 1919, THE PETITIONER WAS VESTED WITH DISCRETION IN THE ALLOWANCE AND DISALLOWANCE OF CLAIMS WHICH WAS NOT REMOVED BY THE ACT OF FEBRUARY 18, 1929

The Act of March 2, 1919, not only defined the losses upon which claims might be based, but it also provided expressly that "said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable * * *." The Act also provided that:

> * * * no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so

> incurred by the claimant were made in good faith, for or upon property which contained * * * chrome * * * in sufficient quantities to be of commercial importance * * *

These provisions obviously vested in the Secretary of the Interior complete discretion in the allowance and disallowance of claims. In this division of the argument we contend that even if the petitioner was wrong in interpreting the Act of March 2, 1919, as requiring him to disallow a claim based upon expenditures for the purchase of property to which title was retained, the court below erred in entering a judgment which denied him a discretion expressly conferred upon him by the Act of March 2, 1919. The nature and extent of the discretion of the Secretary of the Interior under the Act of March 2, 1919, was considered by this Court in *Work* v. *Rives*, 267 U. S. 175. That case involved the action of the Secretary of the Interior in disallowing a portion of the claim based upon the amount paid by the claimants to obtain a release from a contract to purchase property, and came to this Court by appeal from a judgment of the Court of Appeals of the District of Columbia, which affirmed a judgment of mandamus directing the Secretary to allow the claim. While the claim in that case was based upon expenditures made in obtaining a release from a contract to buy land, and the claim in the present case is based upon expenditures made in the purchase of land, the

principle involved is the same. The loss in that case was clear, whereas in this case, where the claimant retains title to the property purchased, the loss, if any, cannot be exactly determined. In reversing the judgment of the court below, this Court said, at pages 178–179, 181–183:

> The Dent Act was passed by Congress in an effort to do justice and equity to the many persons who could not obtain from the Government compensation for supplies or services furnished or losses incurred in helping the Government during the war, because of a lack of enforceable contracts or equities.
>
> * * *
>
> By section 5, provision was made, not to pay for supplies or services rendered directly to the Government, but to relieve a class of persons who were invited by the Government to invest money in the production and preparing for the production of certain metals or materials difficult to obtain, and needed for the war, and who had thereupon incurred expense therein and had suffered losses because of the coming of the armistice and the consequent destruction of the market for such metals.
>
> The said Secretary was to make adjustments and payments in each case as he should determine to be just and equitable; and the decision of the Secretary was to be "conclusive and final."
>
> * * * * *

The above summary of section 5 clearly shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and moral considerations. *United States* v. *Realty Company*, 163 U. S. 427, 439; *Allen* v. *Smith*, 173 U. S. 389, 402. Congress did not wish to create a legal claim. It was not dealing with vested rights. It did not, as it did with the claims for supplies and services directly furnished the Government under the first and second sections of the Act, make the losses recoverable in a court, but expressly provided otherwise. It dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fradulent claims or merely speculative losses. It vested the Secretary with power to reject all losses except as he was satisfied that they were just and equitable and it made his decision conclusive and final. Final against whom? Against the claimant. He could not resort to court to review the Secretary's decision. This was expressly forbidden. By the fifth proviso, however, the Government was permitted through any of its agencies or even by a committee of Congress duly authorized, to review the settlement by the Secretary and by necessary implication to reverse it. If the Government

was defrauded, it was authorized to sue to recover any money phid under the award.

Congress was occupying toward the proposed beneficiaries of section 5 the attitude rather of a benefactor, than of a debtor at law. Congress intended the Secretary to act for it, and to construe the meaning of the words used to describe the elements of the net losses to be ascertained and to give effect to his interpretation without the intervention of the courts. This statute presents a case of as wide discretion as was held to have been vested in the Secretary of the Navy in the *Decatur Case*.

Nor does the amendment of 1921 change the effect of the Act in this regard. His counsel insist that it was adopted in order to relieve claimants from previous narrow rulings of the Secretary. There is nothing in the amendment that indicates the Congressional purpose to do more than it purports to do, i. e., to enable the Secretary to entertain claims for losses incurred at the instance of any government agencies whether direct and personal or by public invitation, and to enable the Secretary to grant rehearings, correct miscalculation and award additional amounts. The amendments still left all claims to his sense of justice and equity.

In *Work* v. *Chestatee Corporation*, 267 U. S 185, this Court considered the action of the Secretary of the Interior in disallowing a portion of a claim under Section 5 of the Act of March 2, 1919, based

upon interest on money borrowed by the claimant, and reversed a judgment of the court below which had affirmed a judgment of the Supreme Court of the District of Columbia issuing a writ of mandamus directing the Secretary of the Interior to allow the claim. This Court said, at page 187:

> The question was one for the Secretary of the Interior to decide, and that finally.

In disposing of the present case the lower court referred to its own earlier decision in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but did not make any reference to the reversal of that decision by this Court in *Work* v. *Rives*, *supra*.

In *Work* v. *Rives*, *supra*, this Court held that, in addition to the broad discretion conferred upon the Secretary to determine what allowances and adjustments would be just and equitable, the Act of March 2, 1919, gave him discretion to construe the Act and determine all questions of law arising thereunder. Assuming for the present purpose that the Act of February 13, 1929, permitted a review of the construction placed upon the Act by the Secretary, it is clear that it did not permit a review of the exercise of his discretion in determining what allowances should be made as a matter of justice and equity. The court below recognized no such distinction and proceeding in accordance with its opinion will necessarily deprive the Secretary of the discretion conferred upon him by the

Act of March 2, 1919, to disallow all claims which he does not consider just and equitable. If he is only authorized to find the facts and determine the loss therefrom (as he is required to do by the opinion of the court below) he is not free to determine the justice and equity of the claim as the statute requires.

As we have pointed out above, it does not appear that any proof was offered by the respondent to show that it had sustained any loss. There was apparently no proof that the property purchased by the respondent had declined in value, and there is no indication whatever in the record that it was worthless, as the respondent must have contended that it was in fixing the loss as the full purchase price. Aside from the bare claim by the respondent, the only evidence in the record as to the value of the property was that chrome ore in a substantial amount and of substantial value had been extracted from the property and salvaged. There is nothing in the record to show that the property has been stripped of all chrome, or that the property had no salvage value for other purposes.

The answer of the petitioner does not clearly allege that after hearing such evidence as the respondent cared to offer the petitioner decided that it would be unjust and inequitable to make any allowance to the respondent for expenditures in the purchase of property to which title was re-

tained. If no allegation in the answer permits the interpretation that the petitioner has already exercised his discretion in deciding whether it would be just and equitable to allow respondent's claim, the statute requires that he should be allowed to exercise that discretion. As we interpret the judgment of the court below, however, the petitioner has been directed to find the facts and to make an allowance in accordance with that finding. Under that judgment he could not disallow the claim, because he concluded that it would be unjust and inequitable to allow it. It is difficult to forecast the condition of proof which might induce the petitioner to decide that the allowance of the claim would be unjust and inequitable, but it requires little exercise of the imagination to conclude that the proof adduced might suggest to the petitioner that he should disallow the claim in the exercise of his discretion. The judgment of the court below denies all opportunity to exercise that discretion, and for that reason it is erroneous.

In paragraph 12 of the answer (R. 18) the petitioner alleges that—

> * * * his action rejecting the petitioner's claim to reimbursement for the purchase price of the real estate known as the Deer Creek Mine, which is affirmed and acquiesced in by the respondent, being based upon his finding that no such loss ever was sustained as a matter of fact, is not subject

> to review under the terms of the act of February 13, 1929, pursuant to which the petition in the instant case was filed.

If this allegation is to be interpreted as alleging a hearing before the petitioner and a determination by him in the exercise of his discretion that in fact the respondent suffered no loss in the purchase of property to which it retained title, and that, accordingly, it would be unjust and inequitable to make any allowance to the respondent in connection with such expenditures, it is clear that the judgment of the court below was erroneous, because it was based upon a review of the petitioner's determination upon a question of fact and of the exercise of petitioner's discretion. A review of the Secretary's determination upon a question of fact is expressly prohibited by the Act of February 13, 1929, which provides in part:

> * * * the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

The Act of February 13, 1929, does not give any right of review of the exercise of the Secretary's discretion in determining whether the allowance of a claim would be just and equitable, and the exercise of this discretion, therefore, is still as final and conclusive as it was held to be in *Work* v. *Rives, supra,* and *Work* v. *Chestatee Corporation, supra.*

CONCLUSION

The judgment of the Court of Appeals of the District of Columbia is erroneous and should be reversed.

THOMAS D. THACHER,
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SETH W. RICHARDSON,
Assistant Attorney General.
WHITNEY NORTH SEYMOUR,
G. A. IVERSON,
Special Assistants to the Attorney General.
E. C. FINNEY,
Solicitor, Interior Department.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all pay-

ments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said

Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred, and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and

also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

ACT OF NOVEMBER 23, 1921, C. 137, 42 STAT. 322

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.